

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re: *
Financial Resources Mortgage, Inc. and * **Chapter 7**
* **Case Nos. 09-14565-JMD**
C L & M, Inc. * **09-14566-JMD**
* **(Jointly Administered)**
*
*
*

Debtor(s) *

Steven M. Notinger, Chapter 7 Trustee, * **Hearing Date:**
Movant * **Hearing Time:**
*
v. *

Gould & Burke, PLLC, *
Respondent *

EMERGENCY MOTION FOR TURNOVER OF ESTATE PROPERTY PURSUANT TO
11 U.S.C. §542

Steven M. Notinger, the Chapter 7 Trustee for C L and M, Inc. (“CLM”) and Financial Resources Mortgage, Inc. (“FRM”) (collectively, “the Debtors”), moves that the Court, on an emergency basis, order that Gould & Burke, PLLC (“G&B”) turnover estate assets in its possession to the Trustee, namely, approximately \$53,209.64 held in G&B’s law firm trust account on behalf of CLM (“the Funds”), pursuant to 11 U.S.C. §542. In support of this Motion, the Trustee states as follows:

1. CLM and FRM were put into an involuntary bankruptcy by petitioning creditors on November 20, 2009 (the “Petition Date”). Steven M. Notinger is the duly appointed Chapter 7 Trustee for CLM and FRM. Pre-petition the Debtors were in the business of soliciting,

arranging and funding various mortgages transactions between private lenders and borrowers. As alleged in many filings with the Court, the Debtors appear to have created and/or participated in a Ponzi scheme where lenders were told they were investing in a particular mortgage, but their funds were often diverted to other investors or other entities controlled by the Debtors and/or the Debtors' principals.

2. G&B is a law firm which represented CLM and FRM pre-petition on many of its mortgage loan transactions.

3. In a case that is now stayed by the Superior Court, G&B filed a Amended Trustee Disclosure with the Belknap County Superior Court, dated December 30, 2009, which states that G&B is holding in its trust account \$53,209.64 "in trust" for CLM. A copy of the G&B Amended Trustee Disclosure is attached as Exhibit A.

4. The Trustee has requested in writing on several occasions that G&B turn over to him the Funds in the G&B trust account pursuant to 11 U.S.C. §542. G&B initially indicated that it would turn over the Funds. However, G&B is concerned that the law firm of Shaheen & Gordon ("S&G) is asserting that it has a pre-judgment trustee attachment against G&B's trust account on behalf of one or more of CLM's creditors. If such an attachment was granted (and the Trustee would argue that under state law, a law firm's trust account cannot be attached), it was granted in mid-November, 2009, well within 90 days of the Petition Date, and is clearly an avoidable preference pursuant to 11 U.S.C. §547.

5. This is a situation where the facts and law are clear. Just because there is a (disputed) pre-judgment attachment on the Funds does not take them out of being property of the bankruptcy estate under 11 U.S.C. §541. G&B does not object to the Trustee's Motion, but asks

that the Trustee obtain an Order from the Bankruptcy Court in order to prevent any argument that G&B took funds out of trust in violation of a Superior Court Order.

6. The Trustee requests a turnover order against G&B pursuant to 11 U.S.C. §542, because he has been unable to obtain voluntary turnover of the CLM Funds which G&B is holding. G&B, however, consents to the Trustee's Motion.

7. The Trustee is filing this Motion on an emergency basis because 1) there is no legitimate reason that the Funds should not be turned over immediately; and 2) there are presently no funds in the estate which is incurring substantial expenses in trying to preserve assets going forward, including, but not limited to, mailing hundreds of copies of the Court's Preliminary Injunction Order to FRM/CLM borrowers and lenders and recording the Preliminary Injunction Order in various registries of deeds.

WHEREFORE, the Trustee requests that the Court:

A. Grant this Motion and order G&B to turn over the \$53,209.64 of CLM funds in its trust account pursuant to 11 U.S.C. §542; and

B. Grant such other and further relief as the Court deems just and equitable.

Respectfully submitted,

STEVEN M. NOTINGER,
CHAPTER 7 TRUSTEE

By his attorneys:
Donchess & Notinger, PC

Dated: 2/5/10

By: /s/ Deborah A. Notinger
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CERTIFICATE OF SERVICE

I, Deborah A. Notinger, hereby certify that I have on this date served the foregoing Motion on each person named below by causing it to be filed electronically via the CM/ECF filing system or by e-mail as indicated:

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Dated: 2/5/10 /s/ Deborah A. Notinger
Deborah A. Notinger (NH Bar # 02013)